

REMARKS

The present amendment is submitted in response to the Office Action mailed July 26, 2006. Claims 10-13 were previously withdrawn. By the present amendment, claims 1 and 19 have been amended to more appropriately define the invention; claim 20 has been canceled without prejudice or disclaimer; and new claim 21 has been added. In view of the above amendments and the following remarks, reconsideration and allowance of this application are respectfully requested.

Claim 19 stands rejected under 35 U.S.C. §102(a) over U.S. Patent No. 6,443,973 issued to Whitman (hereinafter “Whitman”). It is respectfully submitted that the present invention as claimed is patentably distinguishable over Whitman. For example, Whitman fails to teach or suggest the recited “offset distal end wherein said offset distal end is fixed relative to the longitudinal axis to extend along a second longitudinal axis in general parallel relation to the longitudinal axis and in spaced relation therewith.” In making the rejection of claim 19, the configuration illustrated in Fig. 3 is relied upon in the Office Action. However, no elements identified in Whitman are in fixed parallel relation to the axis of the flexible shaft portion 122. Rather, Fig. 3 merely illustrates the flexibility of the shaft portion 122. In addition, Whitman does not teach or suggest the recited “manually manipulative proximal actuator moveable relative to the handle to actuate the fastener applying mechanism.” Whitman is devoid of this structure. The element 110 as identified in the Office Action is not a manually manipulative actuator in moveable relation to the handle 100, but, rather is a stationary drive shaft motor 110 positioned inside the handle 100, operation of which requires a power source 114. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1-5, 7 and 14 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,582,611 to Tsuruta et al. (hereinafter “Tsuruta”). It is respectfully submitted that the present invention as claimed is patentably distinguishable over Tsuruta. For example, Tsuruta fails to teach or suggest the recited “second substantially linear elongate portion distal of the first elongate portion and extending generally along a second longitudinal axis intersecting the first longitudinal axis at a predetermined fixed angle with respect to the first longitudinal axis.” Tsuruta is devoid of this element. The element 511 identified in the Office Action is a leaf spring 511 slidably mounted on the sides of the insertion section 2 and used in conjunction therewith to bend the distal end of the insertion section 2 in one direction. Thus, the axis on which the leaf spring 511 extends is not at an angle, predetermined fixed or otherwise, to that of the insertion section 2. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1-9, 14 and 20 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,566,620 to Green et al. (hereinafter “Green ‘620”). Claim 20 has been canceled without prejudice or disclaimer. It is respectfully submitted that the present invention as claimed is patentably distinguishable over Green ‘620. For example, Green ‘620 fails to teach or suggest the recited “first substantially linear elongate portion ... and a second substantially linear elongate portion distal of the first elongate portion and generally extending along a second longitudinal axis intersecting the first longitudinal axis at a predetermined fixed angle with respect to the first longitudinal axis.” In contrast, Green ‘620 discloses a shaft assembly 100 including a joint 150 at the distal end of the shaft assembly 100 having a spherical ball 152 to facilitate rotational movement of the fastener applying assembly 200. The

shaft 120 shown in Fig. 13 of Green is longitudinally curved. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1-5, 7-8, and 14 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,915,616 to Viola et al. (hereinafter “Viola”). It is respectfully submitted that the present invention as claimed is patentably distinguishable over Viola. For example, Viola fails to teach or suggest the recited “fastener applying mechanism including a plurality of fasteners arranged in a general linear array.” Viola is devoid of any teaching or suggestion of a fastener applying mechanism which includes fasteners arranged in a general linear array. In contrast, Viola teaches a surgical fastener device for applying an annular array of fasteners. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 1-9, 14 and 20 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,732,871 to Clark et al. (hereinafter “Clark”). Claim 20 has been canceled without prejudice or disclaimer. It is respectfully submitted that the present invention as claimed is patentably distinguishable over Clark. For example, Clark fails to teach or suggest the recited “first substantially linear elongate portion...and a second substantially linear elongate portion distal of the first elongate portion and extending generally along a second longitudinal axis intersecting the first longitudinal axis at a predetermined fixed angle with respect to the first longitudinal axis.” In contrast, Clark incorporates a flexible shaft portion 76 which is not fixed, but, is bendable to a range of bending angles relative to the axis of the shaft assembly. Accordingly, withdrawal of this rejection is respectfully requested.

For at least the reasons discussed above, claim 1 is believed to be patentable over Tsuruta, Viola, Clark and Green ‘620. Because claims 2-9 and 14 depend from and, therefore, include all the limitations of claim 1, it is respectfully submitted that these claims are

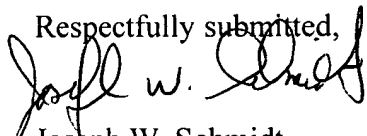
also allowable. Likewise, new claim 21 is allowable at least by virtue of its dependence from allowable claim 1.

Claims 15-17 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Tsuruta, Viola, Clark, or Green '620. Additionally, Claim 18 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Tsuruta, Viola, Clark, or Green '620 in view of Green '933.

In view of the above discussion of Tsuruta, Viola, Clark and Green '620 with reference to claim 1, and because claims 15-18 depend from, and, therefore include all the limitations of claim 1, it is respectfully submitted that these claims are also allowable.

CONCLUSION

In view of the foregoing, Applicant respectfully submits that all of the claims pending in this application are in condition for allowance. Should the Examiner believe that a telephone or a personal interview may facilitate resolution of any remaining matters, he/she is respectfully requested to contact Applicant's undersigned representative at the number indicated below.

Respectfully submitted,

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